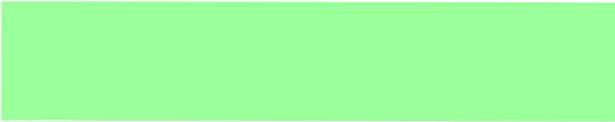
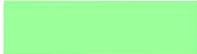


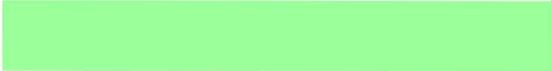


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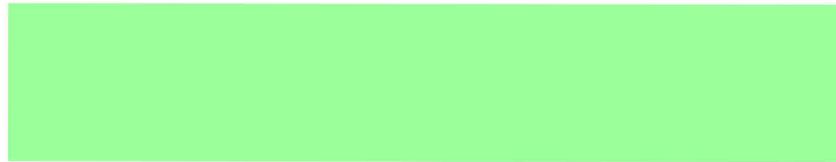


DATE: **JUL 25 2014** Office: LAS VEGAS FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Las Vegas, Nevada. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the underlying application is unnecessary.

The applicant is a native and citizen of the Philippines, who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting her intent when she entered the United States as a nonimmigrant. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident parents.

The Field Director found that the applicant failed to establish that her qualifying relatives would experience extreme hardship as a consequence of her inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Director*, dated January 24, 2014.

On appeal, the applicant's attorney asserts that the qualifying parents will encounter medical, financial, emotional and other hardships if the applicant is unable to remain in the United States.

The record contains, but is not limited to: a Form I-290B, Notice of Appeal or Motion; an appeal brief; affidavits from the applicant's father, mother, brother, other family members and friends, accompanied by their identification documents; a list of the qualifying parents' relatives in the United States; Department of State website information about the availability of the applicant's immigrant visa; country-conditions documentation for the Philippines; financial documentation; psychological assessments of the applicant's parents and a list of their medications; and documentation submitted with the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of

such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that the applicant became the beneficiary of an approved Form I-130 that her parents had filed on her behalf on July 22, 2013, before she was admitted to the United States as a non-immigrant on July 31, 2013. Moreover, in late July 2013, the Department of State publicized that the applicant's visa would be current in August 2013, which entitled her to immigrate shortly after she received her non-immigrant travel visa. In addition, the record reflects that the applicant informed the U.S. consulate in Manila in her non-immigrant visa application that her parents had filed a Form I-130 on her behalf. The record also reflects that the applicant's parents intended to have the applicant visit them as a graduation gift in 2013.

In her November 20, 2013, sworn statement, the applicant indicates that she entered the United States with her tourist visa on July 31, 2013, for "permanent residency," and her parents told her that she needed to come to the United States to file Form I-485. She further states that she did not know that her immigrant visa became available when she left the Philippines. The sworn statement does not indicate whether the interviewing officer asked her if she planned to stay in the United States or return to the Philippines after filing Form I-485.

The AAO conducts appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). According to the U.S. Supreme Court, a misrepresentation must have been "predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material." *Kungys v. U.S.*, 485 U.S. at 771-72. Additionally, "materiality" is defined in 9 FAM 40.63 N6.1, which states, in pertinent part, that:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The Attorney General has declared the definition of "materiality" with respect to INA 212(a)(6)(C)(i) to be as follows: "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:(1) The alien is inadmissible on the true facts; or (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted

in a proper determination that he or she be inadmissible.” (*Matter of S- and B-C*, 9 I & N 436, at 447.)

Because the applicant was eligible to immigrate independent of her obtaining admission as a non-immigrant, her claim that she was visiting the United States on a graduation trip when her Form I-130 already had been approved was not a material misrepresentation. She was legally entitled to immigrate; upon being admitted as a non-immigrant, she did not receive a benefit for which she would otherwise not have been eligible. Furthermore, the applicant told the U.S. consulate that her parents had filed a Form I-130 on her behalf prior to obtaining her tourist visa. Moreover, her sworn statement indicates that she came to the United States to fill out a Form I-485, but it does not indicate she planned to remain here or lacked an intent to return to the Philippines, particularly given several previous trips she had taken as a tourist. As such, no evidence in the record establishes that the applicant had decided to remain in the United States, with immigrant intent, when she arrived with her non-immigrant visa. Therefore, the waiver application is unnecessary, and it is not necessary to address whether the applicant established extreme hardship to her qualifying relatives pursuant to section 212(i) of the Act.

In the present case, the record fails to establish that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Accordingly, the applicant is not inadmissible and the director’s finding her inadmissible under section 212(a)(6)(C) of the Act is withdrawn. The applicant’s waiver application is thus unnecessary and the appeal will be dismissed.

ORDER: The application for waiver of inadmissibility is declared unnecessary and the appeal is dismissed.